

OGC HAS REVIEWED.

LS 6-0997

9 MAY 1956

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Congressional Right to Executive Information

1. This memorandum is for information only.
2. Attached is the most recent of a series of studies on the right of the Congress to obtain information from the Executive Branch and contrariwise the right of the Executive Branch to withhold information from the Congress. This study was prepared for the House Committee on Government Operations and like its predecessor studies prepared for or at the request of Congress, it reaches the conclusion that refusal of the President and heads of departments or agencies to furnish information to the Congress is not constitutional law. Such refusal is, according to the report, a mere naked claim of privilege. This is in contrast to a series of opinions from the Attorney General to which we have referred in previous memoranda and which based the right of the Executive to refuse information to the Congress on the constitutional doctrine of the separation of powers.
3. Both sides in the main cite the same authorities, particularly Supreme Court decisions, but they draw opposite conclusions therefrom. All agree that the question has never been put to the final legal test and generally agree that that test would probably be impeachment proceedings. This necessarily brings us to the conclusion that the problem is primarily political rather than legal. Strictly legal arguments are being continually refined on either side and the courts, particularly the Supreme Court, are as constantly seeking means to avoid the main issue. As a practical matter, our conclusion remains that an Administration of any real strength can successfully refuse to honor requests from the Congress where it has a valid reason for such refusal based on some element of the national interest.

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LAWRENCE R. HOUSTON
General Counsel

Att.

cc: Legislative Counsel

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